

Snake River



HYDRO POWER

ROBERT F. KLUMPP

SENIOR VICE PRESIDENT

FINANCE

IDAHO POWER COMPANY

12204

BOX 70 • BOISE, IDAHO 83707

September 11, 1980
RECORDATION NO. 12204
Filed 1425

SEP 19 1980 - 4 35 PM

INTERSTATE COMMERCE COMMISSION

263A116

SEP 19 1980

INTERSTATE COMMERCE COMMISSION

Interstate Commerce Commission

12th Street and Constitution

Avenue, N W

Washington, D C 20423

Attention: Secretary

Gentlemen:

SEP 19 1980 - 4 35 PM

Enclosed herewith for filing and recording pursuant to 49 USC §11303, are one (1) original and seven (7) conformed copies of the following:

1. Conditional Sale Agreement dated as of June 1, 1980, between Ortner Freight Car Company and Exchange National Bank of Chicago, as Owner-Trustee;
2. Agreement and Assignment dated as of June 1, 1980, between Ortner Freight Car Company and LaSalle National Bank, as Agent;
3. Lease of Railroad Equipment dated as of June 1, 1980, between Exchange National Bank of Chicago, as Owner-Trustee and Sierra Pacific Power Company and Idaho Power Company; and
4. Assignment of Lease and Agreement dated as of June 1, 1980, between Exchange National Bank of Chicago, as Owner-Trustee and LaSalle National Bank, as Agent.

The foregoing documents relate to the purchase and financing of:

- 70 100-ton coal hopper cars (Car Nos VALX 80,001-80,070, both inclusive).

Enclosed is our check in the amount of \$100 in payment of the applicable recording fees.

Robert F. Klumpp
Babe Elvey

12204 C
RECORDATION NO. Filed 1426

SEP 19 1980 -4 35 PM

INTERSTATE COMMERCE COMMISSION

ASSIGNMENT OF LEASE AND AGREEMENT

Dated as of June 1, 1980

between

EXCHANGE NATIONAL BANK OF CHICAGO,

as Owner-Trustee

and

LASALLE NATIONAL BANK,

as Agent

ASSIGNMENT OF LEASE AND AGREEMENT dated as of June 1, 1980 (hereinafter called the Assignment) between EXCHANGE NATIONAL BANK OF CHICAGO, not individually but solely in its capacity as Trustee (hereinafter together with its successors and assigns, called the Vendee) under a Trust Agreement dated as of the date hereof with FIRST SECURITY BANK OF IDAHO, N.A. (hereinafter called the Beneficiary), and LASALLE NATIONAL BANK, as Agent (hereinafter together with its successors and assigns, called the Assignee) under the Participation Agreement dated as of the date hereof (hereinafter called the Participation Agreement).

WHEREAS, the Vendee and ORTNER FREIGHT CAR COMPANY (hereinafter called the Builder) have entered into a Conditional Sale Agreement dated as of the date hereof (hereinafter called the Conditional Sale Agreement) covering the construction, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Vendee of the railroad equipment described in Annex A to the Conditional Sale Agreement (hereinafter called the Equipment);

WHEREAS, the Builder and the Assignee have entered into an Agreement and Assignment dated as of the date hereof (hereinafter called the Conditional Sale Assignment) assigning to the Assignee the right, security title and interest of the Builder under the Conditional Sale Agreement as security for the payment of the Conditional Sale Indebtedness (as defined in the Conditional Sale Agreement);

WHEREAS, the Vendee and SIERRA PACIFIC POWER COMPANY and IDAHO POWER COMPANY (hereinafter called collectively the Lessees and individually a Lessee) have entered into a Lease of Railroad Equipment dated as of the date hereof (hereinafter called the Lease) providing for the lease to the Lessees of the Equipment; and

WHEREAS, in order to provide further security for the payment of the Conditional Sale Indebtedness and as an inducement to the Investors (as defined in the Participation Agreement) to invest in the Conditional Sale Indebtedness, the Vendee has agreed to assign for security purposes certain of its rights in, to and under the Lease to the Assignee;

NOW, THEREFORE, in consideration of the sum of One Dollar and other good and valuable consideration paid by the Assignee to the Vendee, the receipt of which is hereby acknowledged, as well as of the mutual covenants herein contained, the parties hereto do hereby agree as follows:

SECTION 1. The Vendee hereby assigns, transfers and sets over unto the Assignee, its successors and assigns, as collateral security for the payment and performance of the obligations of the Vendee under the Conditional Sale Agree-

ment, all the Vendee's right, title and interest (other than the rights of the Vendee pursuant to Section 23 of the Lease regarding the cure of certain Events of Default under the Lease) as lessor under the Lease, including, but not limited to, the immediate right to receive and collect all rentals and other sums payable to or receivable by the Vendee under or pursuant to the provisions of the Lease, whether as rent, casualty payment, termination payment, indemnity, liquidated damages or otherwise (such moneys being hereinafter called the Payments), it being expressly understood and agreed by the Assignee that such assignment of the Payments shall not thereby increase the amount of funds applicable to the payment or prepayment of the Conditional Sale Indebtedness or interest or premium, if any, thereon as provided in the last paragraph of Article 4 of the Conditional Sale Agreement; and the right to make all waivers and agreements, to give all notices, consents and releases, to take all action upon the happening of an Event of Default specified in the Lease and to do any and all other things whatsoever which the Vendee as lessor is or may become entitled to do under the Lease; provided, however, that the term Payments shall not include and no assignment is made hereby of the right of the Vendee or the Beneficiary to receive from the Lessees the reimbursements for taxes and other items pursuant to Section 6 of the Lease and the indemnification payments pursuant to the penultimate paragraph of Section 10 of the Lease or the right of the Beneficiary to receive payments under the Indemnity Agreement entered into as of the date hereof between the Beneficiary and the Lessees. In furtherance of the foregoing assignment and transfer, the Vendee hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of or as attorney hereby irrevocably constituted for the Vendee as lessor, to ask, demand, sue for, collect, receive and enforce any and all sums to which the Assignee is or may become entitled under this Assignment and compliance by the Lessees with the terms and agreements on their part to be performed under the Lease.

The Assignee agrees to accept any Payments made by the Lessees for the account of the Vendee as lessor pursuant to the Lease and to acknowledge receipt of such payments, subject to the Vendee's right to receive certain payments directly as above provided. To the extent received, the Assignee will apply such Payments to satisfy the obligations of the Vendee under the Conditional Sale Agreement, subject to the limitations contained in the last paragraph of Article 4 of the Conditional Sale Agreement, and any balance shall be paid to the Vendee on the same date such Payment is applied to satisfy such obligations of the Vendee by bank wire to the Vendee of immediately available federal funds at such address as may be specified to the Assignee in writing, and such balance shall be retained by the Vendee unless an Event of Default, as defined in the Lease, exists or with

notice, demand or a lapse of time would exist. If the Assignee shall not receive any rental payment under the first paragraph of Section 3 of the Lease when due, the Assignee shall notify the Vendee at the address set forth in the Lease.

SECTION 2. This Assignment is executed only as security and, therefore, the execution and delivery of this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Vendee under the Lease, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment, all obligations, if any, of the Vendee to the Lessees shall be and remain enforceable by the Lessees only against the Vendee or persons other than the Assignee.

SECTION 3: To protect the security afforded by this Assignment, the Vendee further agrees as follows:

(a) the Vendee will faithfully abide by, perform and discharge each and every obligation, covenant and agreement which the Lease provides are to be performed by the Vendee (other than any act or omission in respect of which the Lessees have assumed responsibility under the Lease); and, without the express written consent of the Assignee, the Vendee will not anticipate the rents under the Lease or waive, excuse, condone, forgive, or in any manner release or discharge the Lessees thereunder of or from the obligations, covenants, conditions and agreements to be performed by the Lessees, including, but not limited to, the obligation to pay the rentals in the manner and at the times and place specified therein, or enter into any agreement amending, modifying or terminating the Lease; and the Vendee agrees that any amendment, modification or termination thereof without such consent shall be void;

(b) at the Vendee's sole cost and expense, the Vendee will appear in and defend every action or proceeding arising under, growing out of or in any manner connected with the obligations, duties or liabilities of the Vendee under the Lease if such action or proceeding shall arise out of the willful misconduct or gross negligence of the Vendee; and

(c) should the Vendee fail to make any payment or to do any act which this Assignment requires the Vendee to make or do, then the Assignee may (but shall not be obligated), after first making written demand upon the Vendee and affording the Vendee a reasonable period of time within which to make such payment or do such act, and without releasing the Vendee from any obligation hereunder or under the Lease, make such payment or do such act in such manner and to such extent as the Assignee may deem necessary to protect the security

hereof, including, but not limited to, the right to appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of the Assignee and also the right to perform and discharge each and every obligation, covenant and agreement of the Vendee contained in the Lease. In exercising any such powers, the Assignee may pay necessary costs and expenses, employ counsel and incur and pay reasonable attorneys' fees, and the Vendee will reimburse the Assignee for such costs, expenses and fees.

SECTION 4. Upon the full discharge and satisfaction of all the Vendee's obligations under the Conditional Sale Agreement, this Assignment and all rights herein assigned to the Assignee shall terminate, and all estate, right, title and interest of the Assignee in and to the Lease shall revert to the Vendee. The Assignee hereby agrees that it will, at the request of the Vendee or its successors or assigns, make, execute and deliver all such instruments of assignment, transfer, and assurance and do such further acts and things as may be necessary and appropriate to give effect to the terms of this Assignment and the reversion of all estate, right, title and interest of the Assignee in and to the Lease.

SECTION 5. The Vendee represents and warrants that (a) the Conditional Sale Agreement, the Conditional Sale Assignment, the Lease, the Participation Agreement and this Assignment have each been duly authorized, executed and delivered by the Vendee and, assuming the due authorization, execution and delivery by each of the other party or parties hereto and thereto, each is and will remain the valid and binding obligation of the Vendee enforceable in accordance with its respective terms, subject only to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally; (b) the Vendee has not executed any other assignment of the Conditional Sale Agreement or the Lease and its right to receive all payments under the Lease is and will continue to be free and clear of any and all liens, charges, security interests or other encumbrances (except this Assignment) created, incurred, assumed or suffered as a result of any act or omission on the part of the Vendee (other than any act or omission in respect of which the Lessees have assumed responsibility under the Lease), and the Vendee has not received any advance rental payment under the Lease; and (c) to the best knowledge of the Vendee, it has performed all obligations on its part to be performed under the Lease on or prior to the date hereof and there has not occurred on or prior to the date hereof any Event of Default as defined in the Lease or any event which, with notice, demand or lapse of time would constitute an Event of Default.

SECTION 6. The Assignee may, but only in accordance with the provisions of the Participation Agreement and the Conditional Sale Agreement, assign all or any of its rights under the Lease, including the right to receive any Payments due or to become due thereunder. In the event of any such assignment, any such subsequent or successive assignee or assignees shall, to the extent of such assignment, and upon giving by the Assignee of written notice of such assignment to the Vendee and the Lessees, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 7. The Vendee hereby agrees that it will from time to time and at all times, at the request of the Assignee or its successors or assigns, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be, including the execution and acknowledgment of any instrument necessary or appropriate to file, record, register or deposit this Assignment or notice hereof.

SECTION 8. The Vendee shall cause copies of all notices received in connection with the Lease to be promptly delivered to the Assignee at its address set forth in Article 21 of the Conditional Sale Agreement, or at such other address as the Assignee shall designate in writing. The Assignee shall give immediate notice by telegram, promptly confirmed in writing, to the Vendee of any default by the Lessees described in clauses (A) and (B) of Section 11 of the Lease and of any other default by the Lessees described in such Section 11 of which the Assignee, in its Corporate Trust Department, has actual knowledge.

SECTION 9. The terms of this Assignment and all rights and obligations hereunder shall be governed by the laws of the State of Illinois; provided, however, that the parties shall be entitled to all rights conferred by 49 U.S.C. §11303 and such additional rights arising out of the filing, recording, registering or depositing, if any, of the Lease or this Assignment as shall be conferred by the laws of the several jurisdictions in which the Lease or this Assignment shall be filed, recorded, registered or deposited.

SECTION 10. The Assignee hereby agrees with the Vendee that the Assignee will not, so long as no event of default under the Conditional Sale Agreement or Event of Default under the Lease, or any event which with notice, demand or lapse of time could constitute an event of default under the Conditional Sale Agreement or an Event of Default under the Lease, has occurred and is continuing, exercise or enforce,

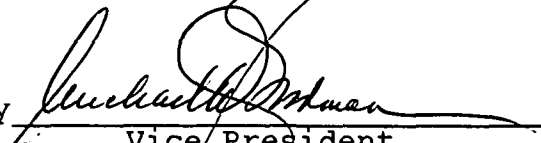
or seek to exercise or enforce, or avail itself of, any of the rights, powers, privileges, authorizations or benefits assigned and transferred by the Vendee to the Assignee by this Assignment, except the right to receive and apply the Payments as provided in Section 1 hereof, and that, subject to the terms of the Lease and the Conditional Sale Agreement, the Vendee may, so long as no event of default under the Conditional Sale Agreement or Event of Default under the Lease has occurred and is continuing, exercise or enforce, or seek to exercise or enforce or avail itself of, such rights, powers, privileges, authorizations or benefits.

SECTION 11. Notwithstanding any other provision of this Assignment: (a) the terms of this Assignment shall not impose any obligations on the Vendee in addition to the obligations of the Vendee under the Lease or under the Conditional Sale Agreement or in any way limit the effect of the last paragraph of Article 4 of the Conditional Sale Agreement; (b) so long as there is no event of default under the Conditional Sale Agreement or an event which with notice, demand or lapse of time would constitute an event of default thereunder, the terms of this Assignment shall not limit or in any way affect the Vendee's right to receive and collect any Payments under the Lease in excess of the obligations of the Vendee under the Conditional Sale Agreement, or empower the Vendee in any way to waive or release the Lessees' obligation to pay such excess amounts, and the Vendee shall continue to be empowered to ask, demand, sue for, collect and receive any and all of such excess amounts and (c) notwithstanding anything herein to the contrary, each and all of the representations, warranties, undertakings and agreements herein made on the part of the Vendee are made and intended not as personal representations, warranties, undertakings and agreements of Exchange National Bank of Chicago or for the purpose or with the intention of binding said bank personally, but are made and intended for the purpose of binding only the Trust Estate (as such term is used in the Trust Agreement), and this Assignment is executed and delivered by said bank solely in the exercise of the powers expressly conferred upon said bank as trustee under the Trust Agreement; and no personal liability or personal responsibility is assumed by or shall at any time be asserted or enforceable against said bank, except for its wilful misconduct or gross negligence, on account of any representation, warranty, undertaking or agreement hereunder of said bank as Vendee or of the Beneficiary on account of the Vendee, either express or implied, all such personal liability, if any, being expressly waived and released by the Assignee and by all persons claiming by, through or under the Assignee; provided, however, that the Assignee or any person claiming by, through or under the Assignee, making claim hereunder, may look to said Trust Estate for satisfaction of the same.

SECTION 12. This Assignment may be executed in any number of counterparts, but the counterpart delivered to the Assignee shall be deemed to be the original counterpart. Although this Assignment is dated as of June 1, 1980 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due corporate authority, have caused this Assignment to be signed in their respective corporate names by duly authorized officers and their respective corporate seals to be hereunto affixed and duly attested, all as of the date first above written.

EXCHANGE NATIONAL BANK OF
CHICAGO, not individually
but solely in its capacity as
Trustee under a Trust Agreement
dated as of June 1, 1980

By 
Vice President


(CORPORATE SEAL)

Attest:


Assistant Secretary

ASSISTANT TRUST OFFICER

LASALLE NATIONAL BANK, as Agent

By 
Vice President

(CORPORATE SEAL)

Attest:


Assistant Secretary

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

On this 5 day of SEPT., 1980, before me personally appeared MICHAEL D. GOODMAN, to me personally known, who, being by me duly sworn, said that he is a Vice President of Exchange National Bank of Chicago, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Dolly B. Jenkins
Notary Public

(NOTARIAL SEAL)

My commission expires

My Commission Expires December 13, 1983

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

On this 4th day of September, 1980, before me personally appeared R. K. WEBER, to me personally known, who, being by me duly sworn, said that he is a Vice President of LaSalle National Bank, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patricia M. Kennedy
Notary Public

(NOTARIAL SEAL)

My commission expires

My Commission Expires August 24, 1982

CONSENT AND AGREEMENT

The undersigned, SIERRA PACIFIC POWER COMPANY and IDAHO POWER COMPANY (hereinafter collectively called the Lessees), the lessees named in the Lease (hereinafter called the Lease) referred to in the foregoing Assignment of Lease and Agreement (hereinafter called the Lease Assignment), hereby, as of the 1st day of June, 1980 (a) acknowledge receipt of a copy of the Lease Assignment and (b) consent to all the terms and conditions of the Lease Assignment and agree that so long as said Lease Assignment is effective:

(1) they will pay all rentals, casualty payments, liquidated damages, indemnities and other moneys provided for in the Lease due and to become due under the Lease directly to LaSalle National Bank, as Agent (hereinafter called the Vendor), the assignee named in the Lease Assignment, by bank wire transfer of immediately available federal funds to LaSalle National Bank, 135 South LaSalle Street, Chicago, Illinois 60690, for credit to Account No. 61-5536-70-3, with notification that the payment is "Re: S.P.P.&I.P. 1980-1" (or at such other address as may be furnished in writing to the Lessees by the Vendor);

(2) the Vendor shall be entitled to the benefits of, and to receive and enforce performance of, all the covenants to be performed by the Lessees under the Lease as though the Vendor were named therein as the Lessor;

(3) the Vendor shall not, by virtue of the Lease Assignment, be or become subject to any liability or obligation under the Lease or otherwise; and

(4) the Lease shall not, without the prior written consent of the Vendor, be terminated (except as expressly permitted by the terms thereof) or modified, nor shall any action be taken or omitted by the Lessees the taking or omission of which might result in an alteration or impairment of the Lease or the Lease Assignment or this Consent and Agreement or of any of the rights created by any thereof.

This Consent and Agreement, when accepted by the Vendor by signing the acceptance at the foot hereof, shall be deemed to be a contract under the laws of the State of

Illinois and for all purposes, shall be construed in accordance with the laws of said State.

SIERRA PACIFIC POWER COMPANY

By John Sabin
Vice President

(Corporate Seal)

Attest:

J. R. Pedersen
Assistant Secretary

IDAHO POWER COMPANY

By Robert F. Klumpp
Vice President

(Corporate Seal)

Attest:

Paul J. Shuregan
Secretary

The foregoing Consent and Agreement is hereby accepted,
as of the 1st day of June, 1980.

LASALLE NATIONAL BANK, as Agent

By [Signature]
Vice President

(Corporate Seal)

Attest:

J. H. Keyel
Assistant Secretary